

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

v.

19-CV-1709 (JLS) (LGF)

JANICE CARROLL,

Defendant.

DECISION AND ORDER

Plaintiff United States of America commenced this real property foreclosure action on December 26, 2019. Dkt. 1. Plaintiff asked the Clerk of Court for entry of default against Defendant Janice Carroll, which the Clerk entered on June 21, 2021. Dkt. 13; Dkt. 14. On February 16, 2022, Plaintiff moved for default judgment against Defendant Carroll. Dkt. 18. The Court referred then the case to United States Magistrate Judge Leslie G. Foschio under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C) to hear and determine, and to report and recommend on, all matters in this case. Dkt. 22.

On September 13, 2022, Judge Foschio issued a combined Report and Recommendation and Decision and Order, recommending that this Court deny Plaintiff's request for default judgment and related attorney's fees, without prejudice and with leave to renew. *See* Dkt. 12. The Court accepted and adopted Judge Foschio's Report and Recommendation on October 18, 2022. Dkt. 27.

While the September 13 Report and Recommendation was pending with this Court, Plaintiff again moved for default judgment on September 16, 2022. Dkt. 23. Plaintiff filed a third motion for default judgment on February 28, 2023, attaching additional supporting documentation. Dkt. 29. Despite being mailed notice of these motions, Defendant did not respond. On March 29, 2023, Judge Foschio issued a Report and Recommendation (the “R&R”), recommending that this Court:

- (1) dismiss Plaintiff’s September 16, 2022 motion for default judgment as moot;
- (2) grant the portion of Plaintiff’s February 28, 2023 motion that seeks default judgment; (3) deny the portions of Plaintiff’s February 28, 2023 motion that seek default damages, entry of a judgment of foreclosure and sale, and attorney fees.

Dkt. 32.

Neither party objected to the R&R,¹ and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

¹ Defendant was mailed a copy of the R&R at her last known address.

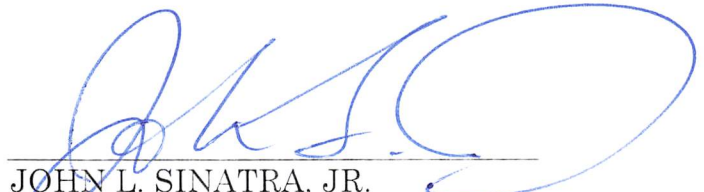
Based on the lack of objections, the Court accepts Judge Foschio's R&R and:

1. dismisses Plaintiff's September 16, 2022 motion for default judgment (Dkt. 23);
2. grants the portion of Plaintiff's February 28, 2023 motion (Dkt. 29) that seeks default judgment; and
3. denies the portions of Plaintiff's February 28, 2023 motion (Dkt. 29) that seek default damages, entry of a judgment of foreclosure and sale, and attorney fees.

The Court refers the case back to Judge Foschio for further proceedings, consistent with the referral order at Dkt. 19.

SO ORDERED.

Dated: May 3, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE